
Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No.: 1:20-CV-05441 (KPF)(KWL)

UNIFORMED FIRE OFFICERS)
ASSOCIATION, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
BILL de BLASIO, et al.,)
)
 Defendants.)
_____)

REMOTE VIDEOTAPED DEPOSITION OF
KERRY JAMIESON
Thursday, August 6, 2020

REPORTED BY:

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR

JOB NO. 28092

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2 the CCRB's procedures and policies in
3 complying with FOIL.

4 Is that what this manual does?

5 A Yes.

6 Q Okay. And it also directs the
7 records access officer to comply with the
8 responsibilities, procedures, and policies
9 that are set forth in the manual?

10 A Yes, that's what it says.

11 Q Okay. If you look towards the
12 bottom of the paragraph, there's a highlighted
13 sentence that says:

14 "The New York State -- New York
15 Department of State's Committee on Open
16 Government is responsible for overseeing and
17 advising the government, public, and news
18 media on FOIL."

19 Do you see that?

20 A Yes.

21 Q Okay. Do you have an
22 understanding as to what the Committee on Open
23 Government is and what its function is?

24 A Yes.

25 Q Can you please describe its

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2 function and how you worked with it.

3 A Well, the main function is a
4 Committee on Open Government provides guidance
5 on access to public records, and, you know,
6 the FOIL law can be found on its Website and
7 they also provide advisory opinions to people
8 writing in on various questions involving the
9 FOIL law.

10 Q Okay.

11 A They have other functions as well,
12 but that's -- for FOIL purposes, that's what
13 they do.

14 Q Okay. And as part of your job, do
15 you review the Committee on Open Government's
16 opinions?

17 A Not regularly, but I have reviewed
18 some.

19 Q Okay. Would you consider the
20 Committee on Open Government to be the
21 statewide authority on the application of
22 FOIL?

23 A What do you mean -- "statewide
24 authority," what do you mean by that?

25 Q Is it the state agency that

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2 where -- anybody else at the CCRB responsible
3 for responding to FOILs rejected an opinion of
4 the advisory committee -- of the advisory --
5 an advisory opinion on the Committee on Open
6 Government?

7 MS. QUINN: Objection.

8 You can answer.

9 THE WITNESS: Not that I'm aware
10 of.

11 BY MR. COLES:

12 Q Are you aware that the committee
13 has long held that the release of
14 unsubstantiated and pending allegations of
15 misconduct would constitute an unreasonable
16 invasion of personal privacy?

17 MS. QUINN: Objection.

18 You can answer.

19 THE WITNESS: I'm aware that the
20 committee has issued advisory opinions
21 stating that an agency can assert that
22 exception to the FOIL law if they want to,
23 but it's not mandatory that it's asserted.

24 BY MR. COLES:

25 Q Right. My question was a little

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2 different, though. And my question is, are
3 you aware that the Committee on Open
4 Government has actually issued a number of
5 opinions saying that the release of
6 unsubstantiated or unfounded allegations is a
7 invasion of privacy?

8 MS. QUINN: Objection.

9 THE WITNESS: My --

10 MS. QUINN: I believe that she
11 answered that question.

12 But you can answer.

13 THE WITNESS: I was going to say,
14 my answer remains the same.

15 BY MR. COLES:

16 Q Okay. Does the CCRB have a
17 position as -- as to the release of
18 unsubstantiated and unfounded allegations
19 against a police officer that believes that
20 those allegations are not an unwarranted
21 invasion of privacy?

22 MS. QUINN: Objection to form.

23 You can answer.

24 THE WITNESS: I'm not sure I
25 understand your question.

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2 BY MR. COLES:

3 Q Okay. Does this -- does the CCRB
4 have a position as to whether or not the
5 release of unsubstantiated or unfounded
6 complaints against a police officer would
7 constitute an unwarranted invasion of personal
8 privacy?

9 A I don't know that we have a
10 position. I know that this -- from my
11 understanding, the CCRB has not and does not
12 assert that FOIL exception when responding to
13 a FOIL request that involves those records.

14 Q I'm sorry. I didn't really
15 understand your answer. Say that one more
16 time.

17 A My answer was that --

18 MS. QUINN: I'm sorry. Can you
19 read back -- can you read back her answer,
20 please.

21 (Previous answer read back.)

22 BY MR. COLES:

23 Q Could you explain what you mean by
24 that.

25 A Sure. So to my knowledge, the

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2 CCRB does not assert an unwarranted invasion
3 of privacy FOIL exception on the basis of what
4 the outcome of the case was.

5 Q My question -- does it as a policy
6 matter assert the exception as to unfounded
7 and unsubstantiated allegations?

8 MS. QUINN: Objection.

9 You can answer.

10 THE WITNESS: The CCRB doesn't
11 assert the FOIL from -- again, to my
12 knowledge, the CCRB does not assert the
13 unwarranted invasion of privacy exception
14 based on whatever the outcome of the case
15 was. That does not factor into whether or
16 not that exception is asserted.

17 BY MR. COLES:

18 Q So even if a case is
19 unsubstantiated or unfounded, the CCRB will
20 not assert the unwarranted invasion of
21 personal privacy exception? Is that your
22 testimony?

23 MS. QUINN: Objection. Asked and
24 answered.

25 But you may answer.

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2 Pardon me.

3 THE WITNESS: The records access
4 officer takes every FOIL request and
5 evaluates it individually. However, to my
6 knowledge, that exception is not asserted
7 on that basis.

8 BY MR. COLES:

9 Q Why not?

10 A Why not? Well, because the
11 records access officer does not -- we've never
12 done an analysis of whether or not an
13 allegation is unsubstantiated or exonerated,
14 unfounded doesn't have to be -- it's not an
15 exception that needs to be asserted. It
16 doesn't fall -- it's not mandatory that that
17 exception is asserted under the FOIL law.

18 Q Okay. And are you saying that as
19 a policy matter the CCRB has decided not to
20 assert that exemption?

21 MS. QUINN: Objection. Asked and
22 answered.

23 You may answer.

24 THE WITNESS: I would say that to
25 my knowledge, the records access officer

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2 does not assert that the unwarranted
3 invasion of privacy exception for -- based
4 on the outcome of a CCRB investigation.

5 MR. COLES: Evan, you can take the
6 exhibit down for the time being.

7 BY MR. COLES:

8 Q Does the CCRB have a policy as to
9 whether or not it releases the disciplinary
10 records of claims and allegations that are
11 pending?

12 A I'm sorry. I don't know if I
13 understand your question.

14 Q Okay. Does the CCRB -- well, you
15 understand that a claim or allegation at the
16 CCRB will go through a process, correct?

17 A Uh-huh.

18 Q Okay. And then ultimately that
19 process will result in a claim being
20 unsubstantiated or substantiated, correct?

21 MS. QUINN: Objection. This is
22 outside the scope of this deposition.

23 MR. COLES: It's not.

24 MS. QUINN: Asking about the
25 process of CCRB investigations is outside

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2 A No.

3 Q Will you tell me the substance of
4 the discussions there?

5 MS. QUINN: Objection.

6 I'm instructing the witness not to
7 answer that question as it breaches
8 attorney-client privilege.

9 BY MR. COLES:

10 Q Will you tell me the reasons why
11 the CCRB does not follow the Committee on Open
12 Government's guidance that unsubstantiated or
13 unfounded allegations are subject to the
14 privacy exemption of FOIL?

15 MS. QUINN: Objection.

16 You can answer.

17 THE WITNESS: Well, I disagree
18 with the premise of your question. The --
19 my understanding of the guidance from the
20 Committee on Open Government is that the
21 unwarranted invasion of privacy exception
22 could be asserted for that purpose, but
23 that agency is not required to assert that.
24 So I don't believe that the CCRB does not
25 follow the guidance.

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2 BY MR. COLES:

3 Q Are you aware recently that the
4 CCRB released records of 81,000 police
5 officers to the New York Civil Liberties
6 Association?

7 MS. QUINN: Objection.

8 You can answer.

9 THE WITNESS: I'm aware.

10 BY MR. COLES:

11 Q Okay. Is it your testimony that
12 the records access officer in that case
13 provided or conducted an individualized
14 determination of the privacy exemption for all
15 those 81,000 officers?

16 MS. QUINN: Objection.

17 You can answer.

18 THE WITNESS: I believe that the
19 records access officer -- again, I was not
20 that person, but the request was for
21 similar records. So in an individual -- so
22 there was no need to do a line by line of
23 every -- of all 81,000-plus officers. I
24 believe it was the determination to give
25 out information -- limited information

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2 about cases.

3 So from my understanding, pending
4 cases, which means cases that were pending
5 at the CCRB or are pending in the APU were
6 not included in that disclosure. Cases
7 that were mediated were not just included
8 in that disclosure. I believe cases that
9 were referred were not included in that
10 disclosure.

11 So I do believe that the records
12 access officer made a determination based
13 on -- that -- those records, whether or not
14 they were substantiated or unsubstantiated,
15 unfounded, exonerated, that did not go
16 to -- that did not warrant the assertion of
17 that privacy exemption.

18 BY MR. COLES:

19 Q Is it your testimony she looked at
20 all of the claims for the 81,000 officers
21 claim by claim?

22 MS. QUINN: Objection.

23 You can answer.

24 THE WITNESS: That's not my
25 testimony. My testimony is that the

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2 exemptions, CCRB noted that the request for
3 records relating to unsubstantiated matters
4 would constitute an unreasonable invasion of
5 privacy?"

6 Do you see that?

7 A Yes, I see it.

8 Q Okay.

9 MS. QUINN: Can I just ask that we
10 scroll down to the paragraph at the bottom
11 of the first column? I just want to see
12 the paragraph preceding.

13 Thank you.

14 BY MR. COLES:

15 Q Do you have an understanding as to
16 the basis for the CCRB's conclusion that the
17 request for records related to unsubstantiated
18 matters would constitute an unreasonable
19 invasion of privacy?

20 A I did not work at the CCRB at the
21 time of that letter. So no, I don't know.

22 Q Okay. But wasn't that the
23 practice at the CCRB at the time you joined in
24 August 2017?

25 MS. QUINN: Objection.

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2 MR. COLES: We can mark as the --
3 what exhibit are we up to?

4 CERTIFIED STENOGRAPHER: Since I'm
5 not handling them, I have not kept up with
6 the numbers.

7 MR. COLES: Okay. We're going to
8 go to the next exhibit, the -- go to the
9 next page of this PDF.

10 MR. NORTH: This should be
11 Exhibit 6 [sic].

12 MR. COLES: This will be 6-A
13 [sic].

14 (Exhibit Number 7-A, Letter
15 from Michael T. Murray to Jonathan
16 Darche, dated 7/8/20, was marked
17 for identification.)

18 BY MR. COLES:

19 Q This is a letter from the Office
20 of General Counsel that's a number of pages
21 long to the executive director of the CCRB.

22 Is this the letter you're
23 referring to?

24 A I believe so. I believe that
25 this -- I remember the longer letter.

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2 Q Okay. And did you, in fact,
3 prepare a response to the letter?

4 A I did not.

5 Q Did anybody?

6 MS. QUINN: Objection.

7 You can answer.

8 THE WITNESS: Not to my knowledge.

9 I was the person that was supposed to
10 respond and I did not.

11 BY MR. COLES:

12 Q And why did you choose not to
13 respond?

14 MS. QUINN: Objection.

15 You can answer.

16 THE WITNESS: I didn't choose not
17 to respond. The instant lawsuit was filed.

18 BY MR. COLES:

19 Q Why did that stop you from
20 responding?

21 MS. QUINN: Objection. I'm going
22 to instruct her not to answer as that
23 impinges upon attorney-client privilege.

24 BY MR. COLES:

25 Q Did you prepare a draft of a